Supreme Court, U.S.
FILED
OCT 15 1992
OFFICE OF THE CLERK

(2)

NO. 92-527

In The
Supreme Court of the United States
October Term, 1992

Boerboom International, Inc.
and Jack Farrell Implement Co.,

Petitioners,

v.

American Computer Trust Leasing; ADP; Automatic Data Processing Dealers Services, Inc.; Automatic Data Processing, Inc.; International Harvester Co., also known as Navistar International Corporation; J. I. Case Co., a wholly owned subsidiary of Tenneco; John Doe; Richard Roe,

Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For the Eighth Circuit

JOINT BRIEF IN OPPOSITION TO PETITION

Robert Alan Dupuy
(Counsel of Record)
FOLEY & LARDNER
First Wisconsin Center
777 East Wisconsin Avenue
Milwaukee, WI 53202-5367
(414) 289-3501

Bradley Grayson Clary
OPPENHEIMER WOLFF & DONNELLY
1700 First Bank Building
Saint Paul, MN 55101
(612) 223-2500

COUNSEL FOR RESPONDENT J. I. CASE COMPANY

Hildy Bowbeer
(Counsel of Record)
John Q. McShane
Mary E. Bolkcom
BOWMAN AND BROOKE
Suite 2600
150 South Fifth Street
Minneapolis, MN 55402
(612) 339-8682

COUNSEL FOR RESPONDENT NAVISTAR INTERNATIONAL TRANSPORTATION CORP.

BEST AVAILABLE COPY

REASONS FOR DENYING WRIT

Respondents J. I. Case Company[1] and Navistar International Transportation Corp. respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Eighth Circuit's Opinion in this case (reported at 967 F.2d 1208 (8th Cir. 1992)) for the following reasons:

1. The Petition presents no important, unsettled question of federal law. Supreme Court Rule 10.

2. The Petition presents no question of federal law which has been decided by the Eighth Circuit in conflict with any decision of this Court, of another United States Court of Appeals, or of any state court of last resort. Supreme Court Rule 10.

---

1. Pursuant to Supreme Court Rule 29, J. I. Case Company states that it is a subsidiary of Tenneco, Inc. Contrary to Petitioners' assertion at p. ii of their Petition, Tenneco is not itself a third-party defendant in this matter.

Petitioners stretch to manufacture a conflict between the Eighth Circuit and two other federal courts of appeals in this matter. Petitioners argue that the Eighth Circuit has held "secret kickbacks" to constitute "ordinary business transactions" in purported contrast to the Sixth and Seventh Circuits, which have held such "kickbacks" to constitute "mail and wire fraud." Petition, p. 6.

Actually, Petitioners miscite the Eighth Circuit's Opinion (967 F.2d at 1212). The Court there merely found that, when Petitioners negotiated computer leases and licensing agreements with Respondents Automatic Data Processing and American Computer Trust Leasing in this matter, these were "ordinary business transactions" under Minnesota state law, giving rise to no special fiduciary duties owing to Petitioners. This finding

in no way presents a federal law conflict question.

CONCLUSION

For these reasons, Respondents J. I. Case Company and Navistar International Transportation Corp. respectfully request that the Petition for Writ of Certiorari be denied.

Dated: October 15, 1992.

Respectfully submitted,

Robert Alan Dupuy
(Counsel of Record)
FOLEY & LARDNER
First Wisconsin Center
East Wisconsin Avenue
Milwaukee, WI 53202-5367
(414) 289-3501

Bradley Grayson Clary
OPPENHEIMER WOLFF & DONNELLY
1700 First Bank Building
Saint Paul, MN 55101
(612) 223-2500

COUNSEL FOR RESPONDENT
J. I. CASE COMPANY

Hildy Bowbeer
(Counsel of Record)
John Q. McShane
Mary E. Bolkcom
BOWMAN AND BROOKE
Suite 2600
150 South Fifth Street
Minneapolis, MN 55402
(612) 339-8682

COUNSEL FOR RESPONDENT
NAVISTAR INTERNATIONAL
TRANSPORTATION CORP.